IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.887 OF 2003

Dharmaji Shankar Shinde & Ors. .. Appellants.
Vs.
Rajaram Shripad Joshi & Ors. .. Respondents.

Mr.S.P.Thorat for the appellants.
Mr.Apasaheb Bandal i/b Mr.Uday Warunjikar for respondent no.1.

CORAM : D.B.BHOSALE, J.

DATED : 15TH NOVEMBER, 2006

P.C.:

. Heard learned counsel for the appellants and respondent no.1.

2. This second appeal is directed against the judgment and order dated 2.5.2002 by which the appeal court has allowed the appeal and has set aside the judgment and decree dated 16.7.1994 passed in Regular Civil Suit No.100 of 1989 filed by the respondents-plaintiffs. The suit was filed for redemption of mortgage. Mr.Thorat, learned counsel for the appellants submitted that the ground nos. J, N, S and X are the substantial questions of law involved in the present appeal. The grounds J, N, S and X reads thus:

"J. That the word sale deed repetedly

applied in the deed of documents dated 20.7.1967 itself show that it was the deed for conditional sale and therefore the defendants are not at all entitle to claim the said land.

N. It should have been held that it is not mortgage and therefore the Plaintiffs is not entitled to redeem the said immovable property.

S. That the documents dated 20th July, 1967 itself is a proof of conditional sale deed and further a conduct of the party to handover the possession of the land itself shows that the sale document was not for mortgage but it was document for conditional sale and therefore the Respondents is not entitled for redemption of the property in dispute.

X. That the plaintiff made out altogether case which is against the principle laid down U/s.91 and 92 of Evidence Act."

3. I perused the judgment. The question of interpretation of a document dated 28.7.1967 titled as "sale with a condition of re-purchase" was involved in the suit. Mr.Thorat, learned counsel submitted that the transaction in question was outright sale and not the mortgage by conditional sale and in support of this contention he took me through the discussion in the judgment of the trial Court as also of the appeal court. He also placed on record the documents dated 28.7.1967 for my perusal. I perused the document very carefully. I found that even the appeal Court has considered the said document very carefully and in a proper perspective. It is clearly reflected in paragraph 12, 13 and 14 of the appeal Court judgment.

It is now well settled that in construing a document the fundamental rule is to ascertain the intention from the words used therein. If the words are plain and unambiguous they must be in the light of the evidence of surrounding circumstances be given their true legal effect. After having gone through the document itself the appeal court has rightly interpreted on the basis of the words reproduced in paragraph 13 of the judgment to gather an intention and hold that it was the mortgage and not outright sale as claimed by the appellants. Even the surrounding circumstances referred to in the appeal court judgment further support the findings recorded by the court below. In my opinion, no substantial question of law is either raised or involved in the appeal. Keeping that in view and considering the findings of fact recorded by the appeal Court and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court under section 100 of the C.P.C. to disturb the findings of fact, this appeal fails and is dismissed as such.

(D.B.Bhosale, J.)